

UNITED STATES PATENT & TRADEMARK OFFICE
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REQUEST FOR PATENT FEE REFUND											
1 Date of Request: 08/11/09		2 Serial/Patent # 10/026,583									
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: COMETTO, Maurilio, et al.

Attorney Docket No.:
ANDIP002/425438

Application No.: 10/026,583

Examiner: Jude Jean Gilles

Filed: December 18, 2001

Group: 2443

Title: METHODS AND APPARATUS FOR
NETWORK CONGESTION CONTROL

Confirmation: 9533

CERTIFICATE OF EFS-WEB TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through EFS-WEB to the Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on May 13, 2009.

Signed: /Latonia Ervin/
Latonia Ervin

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Allowance, mailing date February 13, 2009, and in accordance with 37 C.F.R. §1.705, Applicants respectfully request reconsideration of the period of adjustment. Specifically, Applicants request that the patent term be additionally adjusted under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§ 1.702(b) and § 1.703(b) based on failure to issue the patent within three years of the actual filing date of the application. Applicants request that the following period be added to the 890 days calculated by the PTO:

No. of Days to Be Added = 12/18/04 (3 years after 12/18/01 filing date) + 6/16/06 (Request for Continuation date) = 545.

Statement of Fact, as Required by 37 C.F.R. §1.705(b)(2)

Applicants respectfully submit that the patent term should be adjusted to account for a one-day term extension for every day greater than three years after the filing date of the patent to issue (or until the filing of a Request for Continued Examination) under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b) in view of the decision in *Wyeth v. Dudas*, District Court of Columbia (D.D.C. 2008).

Under *Wyeth*, the proper formula for determining PTA is: 2001 delay under 35 USC § 154(b)(1)(A) ("A delay") plus delay under 35 USC § 154(b)(1)(B) ("B delay") less

(any part of A delay that overlaps with B delay) less applicant's delay. In the present application, this is as follows:

958 days A delay + B delay 545 days (days after 3 years until the filing of a Request for Continuation) – 265 days overlap between A delay and B delay – 68 days Applicants' delay = days 1170 B delay.

In view of the foregoing, it is respectfully submitted that the patent term be adjusted under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b).

This patent application is subject to a terminal disclaimer over pending Application No. 10/777,886 filed on February 11, 2004. Applicants submit that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination.

The Commissioner is hereby authorized to charge the fee for filing a request for reconsideration of the patent term adjustment pursuant to §1.705 set forth in §1.18(e) of \$400.00 and any other fees which may be required or credit any overpayment to Deposit Account No. 50-4480 (Order No ANDIP002).

Applicants respectfully request that the patent term adjustment be reconsidered.

Respectfully submitted,
Weaver Austin Villeneuve & Sampson LLP

/Audrey Kwan/

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